

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of NICHOLAS ALLEN ACKLIN,  
Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JENNIFER DAVENPORT,

Respondent-Appellant.

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UNPUBLISHED

December 14, 2006

No. 270570

Midland Circuit Court

Family Division

LC No. 05-002420-NA

Before: Murphy, P.J., and Smolenski and Kelly, JJ.

MEMORANDUM.

Respondent appeals of right from the trial court order terminating her parental rights to her minor child pursuant to MCL 712A.19b(3)(c)(i), (h), and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that petitioner established the existence of one or more statutory grounds for termination by clear and convincing evidence, the trial court must terminate respondent's parental rights unless it determines that to do so is clearly not in the child's best interests. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000).

The trial court did not clearly err when it found the evidence clear and convincing to terminate respondent's parental rights to the minor child. Respondent had a history of engaging in activities that resulted in her incarceration. She gave birth to the minor child while incarcerated and, when she was released, engaged in further criminal activity causing her to be incarcerated again. When the minor child was brought into care, respondent was incarcerated and was incarcerated again at the time of the termination trial. The conditions that resulted in the trial court taking jurisdiction over the minor child continued to exist at the time of the termination trial, and there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the age of the minor child. Given respondent's history of criminality, there was a reasonable likelihood that the minor child would be harmed if returned to

the care of respondent. Furthermore, respondent was imprisoned for a period exceeding two years and would be unable to provide a normal home for the minor child at that time or within a reasonable period of time.<sup>1</sup>

The trial court also did not err in its best interests determination. MCL 712A.19b(5). Respondent engaged in activities that caused her incarceration even after the minor child was taken into the temporary custody of the court. Respondent's earliest out date was in 2010. The minor child was entitled to permanency and stability, and respondent could not provide that for him while she was incarcerated.

Affirmed.

/s/ William B. Murphy  
/s/ Michael R. Smolenski  
/s/ Kirsten Frank Kelly

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<sup>1</sup> The trial court did not address the issue of MCL 712A.19(b)(3)(a) in its opinion although it included this statutory subsection in its order. Any error in this regard is harmless because the court had ample evidence to find that the other statutory sections were met.